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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: TFT-LCD (FLAT PANEL)
ANTITRUST LITIGATION

Case No. MDL 3:07-md-1827 SI

CLASS ACTION

This Document Relates to:

ALL DIRECT PURCHASER CLASS
ACTIONS

**DECLARATION OF ROBIN M. NIEMIEC
IN SUPPORT OF DIRECT PURCHASER
CLASS PLAINTIFFS' MOTION FOR AN
ORDER APPROVING SECOND
DISTRIBUTION OF SETTLEMENT
FUNDS**

Date: January 17, 2013
Time: 9:00 a.m.
Courtroom: 10, 19th Floor

1 Robin M. Niemiec, declares and states that:

2 1. I am a Client Services Director for Rust Consulting, Inc. ("Rust"). I am over
3 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth
4 herein, and if called as a witness, could and would testify competently hereto.

5 2. I submit this Declaration in order to provide the Court and the parties to the above-
6 captioned litigation (the "Action") with information regarding the calculation for and distribution
7 of the remaining Settlement Fund (the "Second Distribution").

8 3. Pursuant to the Order Granting Preliminary Approval of Direct Purchaser Class
9 Settlement with Defendants Epson Imaging Devices Corporation and Epson Electronics
10 America, Inc. dated October 6, 2010 (Dkt. No. 2077), Rust was appointed the Claims
11 Administrator to oversee, among other things, the process of providing notice about the
12 Settlement.

13 Calculation and Allocation of the Second Distribution

14 4. As set forth in my declaration in support of Direct Purchaser Class Plaintiffs'
15 Status Report Regarding Initial Distribution of Settlement Funds ("Niemiec Status Declaration"),
16 a total of \$94,851.64 remains from 154 uncashed, undeliverable or returned checks ("Uncashed
17 Funds")

18 5. Pursuant to the Initial Distribution Order, and after payment of Class Member
19 Vann's claim and the corrected award amounts for Class Members' Nexis, Inc. and J.H. Fagan
20 Company, Rust reserved \$58,185,584.04 from the Net Settlement Fund for future unanticipated
21 contingences.

22 6. It is estimated that an additional \$15,000 of fees and expenses will be incurred by
23 Rust in preparing for and implementing the Second Distribution, responding to claimant inquiries
24 and activities associated with closing the website, hotline and distribution account.

25 7. If payment is allowed to Rust for \$15,000 anticipated administrative fees and the
26 Uncashed Funds are added to the original reserve amount, \$58,265,435.68 remains to be
27 distributed in the Second Distribution ("Second Distribution Fund").
28

1 8. Pursuant to this Court's Order Regarding Payment of Late-Filed and Disputed
2 Claims ("Late/Disputed Claims Order"), this Court authorized payment to nineteen (19) claims
3 ("Late/Disputed Claims").

4 9. The amount owed to the Late/Disputed Claims for the Initial Distribution, based
5 on the *pro rata* percentages outlined in the Initial Distribution Order, is \$7,196,313.64,
6 collectively.

7 10. After payment of the Late/Disputed claims as outline above, \$52,057,732.73 will
8 remain in the Second Distribution Fund which represents \$21,551,733.98 in panel purchases
9 ("Panel Second Distribution Fund") and \$30,505,998.75 in product purchases ("Product Second
10 Distribution Fund").

11 11. Including the claimants from the Initial Distribution, and the Late/Disputed
12 Claims, a total of 209 claims ("Second Distribution Claimants") had money held back from their
13 Initial Distribution and are entitled to funds from the Panel Second Distribution Fund and/or
14 funds from the Product Second Distribution Fund described in ¶10.

15 12. Similar to the Initial Distribution, within the Panel and Product Class, claimants
16 are to be paid on a *pro rata* basis of their recognized loss. For the Panel Class, the recognized
17 loss is 100% of the eligible purchases of stand alone panels. For the Product Class, the
18 recognized loss is based on percentages of panel value in a finished product which are: 75% for
19 monitors, 15% for notebook computers, 47% for televisions, and 7.6% for other products. The
20 Product Class' recognized loss dollar is calculated using these percentages. For example, if a
21 Class Member has \$1,000,000 in eligible monitor purchases, their recognized loss is
22 \$750,000. 209 Second Distribution Claimants will receive distribution based on a *pro rata*
23 payout of approximately \$.0169 per recognized loss dollar for the Panel Class and approximately
24 \$.0079 per recognized loss dollar for the Product Class.

25 13. After the Late/Disputed Claims Order was issued, Rust was contacted by three (3)
26 additional claimants ("Additional Late/Disputed Claimants"), Propeller, DuPont and OfficeMax,
27 requesting payments for their claims or an adjustment to their already paid claim. These were
28 late-filed or disputed claims that did not provide Affidavits prior to the Late/Disputed Claims

1 Order, but have since provided Affidavits. Attached as Exhibits A, B and C are Affidavits
2 prepared by Propeller, DuPont and OfficeMax, respectively.

3 14. Two of the three Additional Late/Disputed Claimants, Propeller and DuPont, were
4 late-filed claims. The total estimated award value for Propeller's and DuPont's claims (including
5 funds they would be entitled to from the Initial Distribution and the Second Distribution) is
6 \$199,343.52.

7 15. The third Additional Late/Disputed Claimant, OfficeMax, disputed Rust's
8 determination of their claim. In letters dated August 24, 2012 and February 21, 2013, Rust
9 informed OfficeMax that it would consider only approximately \$3.9 million of OfficeMax's
10 approximate \$183 million claim eligible unless proof was provided. Only \$3.9 million in
11 purchases was supported by Defendants' data. OfficeMax recently sent Rust the required proof
12 and it was determined that OfficeMax made approximately \$183,440.899 in eligible purchases.
13 The total estimated award value for OfficeMax's claim (including funds they would be entitled to
14 from the Initial Distribution and the Second Distribution) is \$1,650,858.52.

15 16. If the Additional Late/Disputed Claimants were to receive payment similar to the
16 Late/Disputed Claims, 211 Second Distribution Claimants, will receive distribution based on a
17 *pro rata* payout of approximately \$.0168 per recognized loss dollar for the Panel Class and
18 approximately \$.0075 per recognized loss dollar for the Product Class.

19 17. Upon entry of an order approving the Second Distribution as originally submitted
20 or as modified by the Court, Rust will (a) transfer an amount ordered by the Court into a
21 Distribution Fund, (b) calculate each authorized claimant's share of the Second Distribution Fund
22 and (c) promptly mail payments, via overnight delivery, to Class Members at the address
23 indicated on their Claim Form or as updated in Rust's database.

24 18. Rust recommends that checks disbursed to Authorized Claimants bear the notation
25 "Non-Negotiable After 28 Days" and that no check be negotiated in the Distribution Account
26 more than 45 days after the date of the check.

27 19. Any funds that remain after the 45 days will be disbursed as designated by this
28 Court and Class Counsel.

